IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 910 OF 2006

Pawankumar Satyanarayan Goenka,)
aged 55 years, occupation Service,)
permanent resident of 2A/19,)
Prem Nagar, S.V. Road, Borivali (W),)
Mumbai 400 092,)
Presently in judicial custody at)
Arthur Road Central Prison, Mumbai.)..Applicant

V/s.

The State of Maharashtra,)
through the Senior Inspector)
of Police, D.C.B. C.I.D. Unit No.2,)
Saath Rasta, Agripada, Mumbai.)..Respondent

Shri A.M. Saraogi with Shirish Gupte for the Applicant.
Ms.Rajeshree Gadhvi, APP for the State.

WITH

CRIMINAL APPLICATION NO. 998 OF 2006

Manohar Mahadev Shinde,)
Aged 50 years, residing at)
Jai Bhavani Chawl, J.B.9, Naik Nagar,)
L.B.S. Marg, Opp.Sion Railway Station,)
Sion, Mumbai - 400 022.)
Presently in judicial custody at)
Arthur Road Central Prison, Mumbai.)...Applicant

V/s.

The State of Maharashtra,)
Through DCB CID, Unit-II,)
Mumbai.)...Respondent

Shri Satish Maneshinde with Sayaji D. Nangre for the Applicant.
Ms.Rajeshree Gadhvi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MAY 3, 2006

ORAL JUDGMENT :-

. Both these applications can be disposed of by a

common order as the applicants in both these applications are seeking bail. Both the applicants were arrested on 1st October, 2005 in connection with the offence registered by the Malbar Hill Police Station vide C.R.No.93/2003 for the offences punishable under Sections 397, 452, 302 of the IPC.

2. The prosecution case in brief is that Malbar Hill Police Station had registered FIR No.93/2003 on the basis of the statement made by one Sureshchandra Agarwal in which he had stated that his sister Smt.Asha Sadan Goel who was citizen of Canada and had been to India for the purpose of meeting her relatives and had stayed with said Sureshchandra Agarwal on the night of the incident and therefore, the said offence was registered. The prosecution case is that there was family dispute which was going on between the members of the Agarwal family and in order to resolve the said dispute, she had met her brother and the prosecution case is that in the night on the date of the incident, all the family members had gathered together and had dinner. Smt.Asha Goel slept in a guest bedroom and in the morning at about 6.30 a.m., the complainant Sureshchandra Agarwal found Smt.Asha Goel lying in a pool of blood. Immediately, a doctor was called who examined her and declared that said Smt.Asha Goel was dead. The

prosecution case is that some ornaments and valuable articles and cash amount of Rs.1,21,000/- was stolen from the bedroom. During the course of investigation, one Pradip Prabhakar Parab, an employee of the complainant was arrested. Thereafter, Pradip Parab was released on bail and thereafter, he had given a confessional statement before the Metropolitan Magistrate in which he alleged that the present applicant and others had conspired to kill Smt.Asha Sadan Goel and pursuant to said conspiracy, the deceased was done to death after she was stabbed and assaulted on her head. The Pradip Parab was granted pardon and was made an accomplice and thereafter, the present applicants were arrested.

3. Learned Counsel appearing on behalf of the applicants submitted that the only evidence against the present applicants was in the form of statement of Pradip Parab who was an accomplice. He submitted that in the absence of any evidence corroborating the testimony of Parab, no case was made out against the present applicants. It was further submitted that applicants are in jail since 1st October, 2005 and that chargesheet has been filed and that there was no reason to detain the applicants in custody. It is submitted that the applicants have been falsely implicated and

that the applicants neither had any interaction to the deceased nor had any enmity with her in connection with any matter.

4. Learned Counsel for applicant-Goenka further submitted that applicant was not present in Mumbai at the time of incident and that he was in the train on the way to Jaipur at the time of incident. Learned Counsel for the applicant invited my attention to various documents to show that the applicant was not present in Mumbai at the time of the said offence had been committed. It was submitted that apart from the case on merits, the applicant was suffering from asthma, high blood pressure, Coronary Artery disease since 1996. It was submitted that the applicant was not likely to abscond.

5. Counsel appearing on behalf of the other applicant Manohar Mahadev Shinde submitted that the applicant was entitled to be released on bail on the ground of parity since the co-accused Narendra Goel has been acquitted by the Sessions Court which order has been confirmed by the High Court. He submitted that the Narco Analysis Test and Brain Mapping Test which was conducted upon the applicant was not reliable and was inadmissible in evidence. He further submitted that no

incriminating material has been recovered at the instance of the applicant Shinde. He invited my attention to the statements of witnesses which were recorded by the Investigating Agency and on the basis of these statements, he submitted that there was no iota of evidence against the said applicant and he, therefore, submitted that the said applicant has made out case for grant of bail.

6. Learned Counsel appearing on behalf of respondent-State vehemently opposed the said application. He submitted that the offence which was committed was very heinous and it was a preplanned and premeditated murder. He submitted that at this stage, the application for considering plea alibi did not arise and the burden of proving that the applicant who was not at the scene of offence and was elsewhere fell on the applicant and this burden had to be discharged only during the trial. He submitted that apart from the evidence of an accomplice, there was sufficient evidence to implicate the present applicant.

7. I have given my anxious consideration to the submissions made by the learned Counsel for the applicants and the State. In my view, this is not a fit case for grant of bail. In my view, there is sufficient

material on record to show the involvement of the present applicants in the commission of the said crime. If the applicants are released on bail, they are likely to tamper with the evidence or threaten the accomplice witness.

8. So far as the ground of parity is concerned, in my view, in the case of Goel, the other accused who has been released on bail, the Sessions Court and this Court have clearly observed that there was absolutely no material on record to show his involvement in the said offence. The present applicant, therefore, cannot claim bail on the ground of parity.

9. Applications are dismissed and bail is refused.

10. Hearing of the Sessions Case is expedited. Sessions Court to decide the case as expeditiously as possible in any case within a period of one year. If the trial is not over within a period of one year, liberty is granted to apply again for bail.

. Applications are accordingly disposed of.

(V.M. Kanade, J.)